DONALD G. STERNER

IBLA 89-329 Decided May 30, 1989

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claim abandoned and void. N MC 83879.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Recordation

   Failure to file in the proper Bureau of Land Management office either evidence of assessment work performed or notice of intention to hold as required by 43 U.S.C. | 1744 (1982), and 43 CFR 3833.2 within the time period prescribed results in a conclusive presumption of abandonment of the mining claim.

2. Evidence: Presumptions--Evidence: Sufficiency--Rules of Practice: Evidence

   The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them is rebuttable by probative evidence to the contrary. The presumption is not overcome by a statement, without corroborating evidence, that a document was mailed, or by evidence that the claimant timely recorded a copy with the local recording office.

APPEARANCES: Donald G. Sterner, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Donald G. Sterner appeals from a February 15, 1989, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring unpatented lode mining claim N MC 83879 abandoned and void for failure to file evidence of assessment work performed or notice of intention to hold the claim during the filing period ending December 30, 1987.

In his statement of reasons, Sterner contends that the mining claim has not been abandoned and that evidence of assessment work performed was timely mailed to BLM in 1987.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), and Departmental regulation 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year following the year in which the claim is located. Such filing must be made within each calendar year, i.e., on or after January 1 and on or before December 30. Ronald Willden, 97 IBLA 40 (1987); Robert C. LeFaivre, 95 IBLA 26 (1986). Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. | 1744(c) (1982); 43 CFR 3833.4. Because its records do not indicate that evidence of assessment work performed or notice of intention to hold was filed for the subject mining claim with BLM during 1987, BLM properly deemed the claim to be abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

On appeal, appellant has submitted a copy of a proof of labor recorded with Clark County, Nevada, on October 19, 1987. That document, however, does not reflect that a copy was received by BLM during the filing period in question. Filing or recording the required documents with the local recording office alone does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBLA 45 (1985). Thus, the burden is upon a claimant challenging a determination of abandonment to show that a copy was timely received by BLM.

Congress mandated that failure to file the proper documents in the proper offices within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. Thus, a claim for which timely filings are not made is extinguished by operation of law regardless of the claimant's intent to hold the claim. See United States v. Locke, 471 U.S. 84 (1985). Responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim with or without the benefit of notice from the Department. As Congress did not provide for waiver of this requirement, the Department is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA at 196, 88 I.D. at 372. Accordingly, the Board may not consider special facts or provide relief in view of mitigating circumstances. Where an annual filing is not timely received, for whatever reason, the consequences must be borne by the claimant.

BLM made its determination on the basis that its case file for the subject claim does not include a timely filing for the 1987 calendar year. Appellant asserts that a document for 1987 was mailed to BLM. As proof thereof, appellant has submitted copies of the recorded proof of labor and the purported transmittal letter to BLM.

[2] Administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This presumption of regularity is not overcome by an uncorroborated statement

that the document was submitted to BLM or by evidence that the claimant timely filed it with the local recording office. John R. Wellborn, 87 IBLA 20 (1985). Thus, appellant's uncorroborated statement and a copy of his proof of labor filed with the county is insufficient to overcome the presumption of regularity. See Wilson v. Hodel, 758 F.2d 1369, 1374 (10th Cir. 1985). Examples of acceptable evidence demonstrating that a filing was received would include a copy of the affidavit of labor with a datestamp showing receipt by BLM within the proper filing period or a BLM-prepared acknowledgement receipt. As for the fact that he transmitted his filing by mail, it is well established that a claimant must bear the consequences if a filing is lost by the Postal Service or if delivery does not follow within the time period allowed for filing. See Alice R. Kirk, 88 IBLA 4 (1985); Paul E. Hammond, 87 IBLA 139 (1985).

The purpose of section 314 is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims are being maintained on Federal lands and which have been abandoned. The fact that assessment work was done or that timely filings have been made in other years has no effect on the conclusive presumption of abandonment embodied in the statute. Since the statute is self-operative, a claim must be deemed abandoned when an annual filing is not timely received. See Ptarmigan Co., Inc., 91 IBLA 113 (1986). As appellant has not submitted evidence that an annual filing for the subject mining claim was received by BLM during the 1987 filing period, it is properly deemed to be abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge